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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,768	12/12/2001	James Parr	57095-5010	6865

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HENKEL CORPORATION
THE TRIAD, SUITE 200
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EXAMINER

CHANNAVAJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/017,768	Applicant(s) PARR ET AL.	
	Examiner Lakshmi S Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of amendment and remarks dated 5-04-04 is acknowledged.

Claims 1-25 are pending.

The following rejection made in the previous action has been maintained:

Claim Rejections - 35 USC § 103

Claims 1-4, 7-15 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,020,367 to Duffy et al (please refer to the rejection from previous action).

RESPONSE: Applicants argue that xanthan gum taught by Duffy is not a cationic gum and instead is anionic in nature. In response to this argument, examiner has maintained the instant rejection only to claims that do not recite cationic polymers.

Applicants also argue that while Duffy prefers non-ionic emulsifiers, instant invention utilizes cationic emulsifiers. However, the teachings of prior art are not related to examples and preferred embodiments and instead should be considered as a whole. Duffy teaches that a suitable emulsifier can be selected from anionic, cationic, amphoteric, non-ionic emulsifiers or a combination of the same. Further, Duffy exemplifies the same surfactants that are also recited in the instant claim 4. Therefore, Duffy meets the claim requirements.

Applicants argue that the formulations of Duffy are devoid of water, as it is known to destabilize ascorbic acid solutions. Applicants argue that instant examples 12 (a) and (b) clearly show that the polyol containing ascorbic acid compositions are not stable and that the compositions of Duffy fail to provide stability over time. However, while instant claims 1-4 and 7-14 do not recite water, Duffy recognizes that application of a water-free ascorbic acid to skin is not practical and also suggests preparing the ascorbic acid preparation in a multiphase i.e., oil-in-

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water or water-in-oil emulsions. Thus, Duffy does not teach away from the presence of water in ascorbic acid solutions and the reference does recognize the value of a stable ascorbic acid preparation. Accordingly, for the reasons mentioned above, the rejection has been maintained.

The following is a new rejection applied to claims 5 and 6:

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,020,367 to Duffy et al in view of JP 403246215 (hereafter JP) (please refer to previous action for the teachings of Duffy).

Duffy, discussed in the previous action (also above response) fails to teach the claimed cationic polymers.

JP teaches compositions containing excellent shelf stability comprising 0.5 to 5% L-ascorbic acid and plant extracts and 0.05 to 3% weight of cationic polymer, particularly cationic cellulose. The amounts of ascorbic acid and the cationic polymers taught by JP are in the same range as claimed. Both JP and Duffy desire to prepare stable ascorbic acid compositions. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include a cationic polymer, particularly cationic cellulose, in the range of 0.05 to 3% weight in the composition of Duffy because JP suggests that the compositions containing 0.5 to 5% L-ascorbic acid and plant extracts and 0.05 to 3% weight of cationic polymer impart excellent shelf stability. Accordingly, the expected result is a stable composition of ascorbic acid.

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Claims 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,020,367 to Duffy et al in view of US 5,935,589 to Mukherjee et al (hereafter Mukherjee) (please refer to previous action for the teachings of Duffy).

Duffy suggests preparing oil-in-water or water-in-oil emulsions containing ascorbic acid, but fails to specifically state the claimed phases containing ascorbic acid, silicone oil and sepigel.

Mukherjee teaches a stable composition with different pH emulsions, obtained by mixing stable oil and a stable water phase, each buffered with different to a specific pH and also adjusting the viscosity of the oil phase to a specific viscosity range and the use of the emulsions for cosmetic compositions containing active agents such as retinoids, ascorbic acid etc (col.1). Particularly, Mukherjee teaches the addition of ascorbic acid and retinoids as active ingredients, owing to their instability during the preparation. Mukherjee teaches employing surfactants such as Sepigel, in preparing the emulsions (col. 4, lines 50-67), which is also claimed in the instant application. Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to prepare multiphase emulsions i.e., oil-in-water or water-in-oil or oil-in-water-in-oil emulsions, containing ascorbic acid and employing sepigel, as a surfactant because Mukherjee suggests preparing multiphase emulsions for unstable compounds such as ascorbic acid, by separating the phases clearly with a viscosity enhancer such that the phases do not get mixed up and yet maintain the stability of the compounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala

Examiner

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August 12, 2004